

DAVID L. ANDERSON (CABN 149604)  
United States Attorney  
SARA WINSLOW (DCBN 457643)  
Chief, Civil Division  
KENNETH BRAKEBILL (CABN 196696)  
Assistant United States Attorney

450 Golden Gate Avenue, Box 36055  
San Francisco, California 94102-3495  
Telephone: (415) 436-7167  
Fax: (415) 436-6748  
kenneth.brakebill@usdoj.gov

Attorneys for Defendant USA

KEKER, VAN NEST & PETERS LLP  
BENJAMIN D. ROTHSTEIN - # 295720  
brothstein@keker.com  
EMILY A. HASSELBERG - # 326990  
ehasselberg@keker.com  
633 Battery Street  
San Francisco, CA 94111-1809  
Telephone: 415 391 5400  
Facsimile: 415 397 7188

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

CASE NO. 18-cv-04934 TSH (KAW)

AARON HASSAY,

Plaintiff

v.

UNITED STATES OF AMERICA,

Defendant.

**STIPULATION OF SETTLEMENT AND  
DISMISSAL WITH PREJUDICE;  
~~[PROPOSED]~~ ORDER**

The Honorable Thomas S. Hixson

1 IT IS HEREBY STIPULATED by and between the undersigned Plaintiff and the UNITED  
2 STATES OF AMERICA, by and through their respective attorneys, as follows:

3 WHEREAS, Plaintiff filed the above-captioned action on August 14, 2018;

4 WHEREAS, Plaintiff and Defendant wish to avoid any further litigation and controversy and  
5 to settle and compromise fully any and all claims and issues that have been raised, or could have  
6 been raised, in this action, which have transpired prior to the execution of this Settlement Agreement  
7 ( "Agreement");

8 NOW, THEREFORE, in consideration of the mutual promises contained in this Agreement,  
9 and other good and valuable consideration, the Parties agree as follows:

10 1. Agreement to Compromise Claims. The parties do hereby agree to settle and compromise  
11 each and every claim of any kind, whether known or unknown, arising directly or indirectly from the  
12 acts or omissions that gave rise to the above-captioned action under the terms and conditions set  
13 forth in this Agreement.

14 2. Definition of "United States of America." As used in this Agreement, the United States of  
15 America shall include its current and former agents, servants, employees, and attorneys, as well as  
16 the San Francisco Veterans Administration Medical Center, and/or its current and former agents,  
17 servants, employees, and attorneys.

18 3. Settlement Amount. The United States of America agrees to pay the sum of Seventy-Six  
19 Thousand dollars (\$76,000.00) ("Settlement Amount"), which sum shall be in full settlement and  
20 satisfaction of any and all claims, demands, rights, and causes of action of whatsoever kind and  
21 nature, arising from, and by reason of any and all known and unknown, foreseen and unforeseen  
22 personal injuries, damage to property and the consequences thereof, resulting, and to result, from the  
23 subject matter of this settlement, including any claims for wrongful death, for which Plaintiff or  
24 Plaintiff's guardians, heirs, executors, administrators, or assigns, and each of them, now have or may  
25 hereafter acquire against the United States of America.

26 4. Agreement to Facilitate Referral. The United States of America agrees to make good  
27 faith efforts to facilitate a referral of Plaintiff, consistent with federal laws and regulations governing  
28 the Veteran's Administration ("VA") medical care eligibility, to a non-VA outpatient provider for

1 mental health treatment in the VA's Community Care program. Plaintiff understands that this  
2 stipulation is not a guarantee that Plaintiff will be found eligible by the VA for such treatment.

3       5. Release. Plaintiff and Plaintiff's guardians, heirs, executors, administrators or assigns  
4 hereby agree to accept the Settlement Amount in full settlement and satisfaction of any and all  
5 claims, demands, rights, and causes of action of whatsoever kind and nature, including claims for  
6 wrongful death, arising from, and by reason of any and all known and unknown, foreseen and  
7 unforeseen personal injuries, damage to property and the consequences thereof which they may have  
8 or hereafter acquire against the United States of America on account of the same subject matter that  
9 gave rise to the above-captioned action, including any future claim or lawsuit of any kind or type  
10 whatsoever, whether known or unknown, and whether for compensatory or exemplary damages.  
11 Plaintiff and Plaintiff's guardians, heirs, executors, administrators or assigns further agree to  
12 reimburse, indemnify and hold harmless the United States of America from and against any and all  
13 such causes of action, claims, liens, rights, or subrogated or contribution interests incident to or  
14 resulting from further litigation or the prosecution of claims by Plaintiff or Plaintiff's guardians,  
15 heirs, executors, administrators or assigns against any third party or against the United States,  
16 including claims for wrongful death.

17       6. Dismissal. In consideration of the payment of the Settlement Amount and the other terms  
18 of this Agreement, Plaintiff agrees that Execution of this Stipulation and its approval by the Court  
19 shall constitute dismissal with prejudice of this case, including all claims asserted in this action, or  
20 that could have been asserted in this action, pursuant to Fed. R. Civ. P. 41(a).

21       7. No Admission of Liability. This Stipulation for compromise settlement is not intended to  
22 be, and should not be construed as, an admission of liability or fault on the part of the United States,  
23 and the United States specifically denies that it is liable to the Plaintiff. This settlement is entered  
24 into by all parties for the purpose of compromising disputed claims and avoiding the expenses and  
25 risks of further litigation.

26       8. Parties Bear Their Own Fees and Costs. It is also agreed, by and among the parties, that  
27 the respective parties will each bear their own costs, fees, and expenses and that any attorney's fees  
28 owed by the Plaintiff will be paid out of the Settlement Amount and not in addition thereto.

1           9. Authority. The signatories to this Agreement warrant and represent that they possess full  
2 authority to bind the persons on whose behalf they are signing to the terms of the settlement.

3           10. Waiver of California Civil Code § 1542. The provisions of California Civil Code  
4 Section 1542 are set forth below:

5                   “A general release does not extend to claims that the creditor or releasing party does  
6 not know or suspect to exist in his or her favor at the time of executing the release and  
7 that, if known by him or her, would have materially affected his or her settlement  
with the debtor or released party.”

8 Plaintiff having been apprised of the statutory language of Civil Code Section 1542 by Plaintiff’s  
9 attorney, and fully understanding the same, nevertheless elects to waive the benefits of any and all  
10 rights Plaintiff may have pursuant to the provision of that statute and any similar provision of federal  
11 law. Plaintiff understands that, if the facts concerning Plaintiff’s injury and the liability of the  
12 government for damages pertaining thereto are found hereinafter to be other than or different from  
13 the facts now believed by them to be true, the Agreement shall be and remain effective  
14 notwithstanding such material difference.  
15

16           11. Payment by Check. Payment of the Settlement Amount will be made by check for  
17 Seventy-Six Thousand dollars (\$76,000.00) and made payable to Aaron Hassay, Plaintiff. The  
18 check will be mailed to Plaintiff’s attorneys, Benjamin Rothstein and Emily Hasselberg, at the  
19 following address: KEKER, VAN NEST & PETERS LLP, 633 Battery Street, San Francisco, CA  
20 94111-1809. Plaintiff’s attorneys agree to distribute the settlement proceeds to the Plaintiff.  
21 Defendant expects that payment to Plaintiff will be made within ninety (90) days of the execution of  
22 this agreement by all parties, but it is possible that payment could take longer to process.

23           12. Tax Liability. There shall be no withholding from this amount. Plaintiff understands  
24 that this payment will be reported to the Internal Revenue Service, and that any questions as to the  
25 tax liability, if any, as a result of this payment is a matter solely between Plaintiff and the relevant  
26 tax authorities. If any withholding or income tax liability is imposed upon Plaintiff based on  
27 payment of the Settlement Amount, Plaintiff shall be solely responsible for paying any such  
28 determined liability from any government agency. Nothing in this Agreement constitutes an

1 agreement by the United States of America concerning the characterization of the Settlement  
2 Amount for the purposes of the Internal Revenue Code, Title 26 of the United States Code.

3 13. Treasury Offset Program. Nothing in this Agreement waives or modifies federal, state,  
4 or local law pertaining to taxes, offsets, levies, and liens that may apply to this Agreement or the  
5 settlement proceeds, and Plaintiff is executing this Agreement without reliance on any representation  
6 by Defendant as to the application of any such law. Accordingly, the United States may offset  
7 against the Settlement Amount Plaintiff's delinquent debts to the United States, if any. *See Astrue v.*  
8 *Ratliff*, 560 U.S. 586 (2010).

9 14. Choice of Law and Venue. This Agreement is governed by the laws of the United  
10 States. The exclusive jurisdiction and venue for any dispute relating to this Agreement is the United  
11 States District Court for the Northern District of California. The Honorable Kandis A. Westmore  
12 shall retain jurisdiction of this Settlement Agreement and the enforcement thereof.

13 15. Construction. Each party hereby stipulates that it has been represented by and has relied  
14 upon independent counsel in the negotiations for the preparation of this Agreement, that it has had  
15 the contents of the Agreement fully explained to it by such counsel, and is fully aware of and  
16 understands all of the terms of the Agreement and the legal consequences thereof, and enters into  
17 this Agreement knowingly and voluntarily. For purposes of construction, this Agreement shall be  
18 deemed to have been drafted by all Parties to this Agreement and shall not, therefore, be construed  
19 against any Party for that reason in any subsequent dispute.

20 16. Severability. If any provision of this Agreement shall be invalid, illegal, or  
21 unenforceable, the validity, legality, and enforceability of the remaining provision shall not in any  
22 way be affected or impaired thereby.

23 17. Integration. This instrument shall constitute the entire Agreement between the parties,  
24 and it is expressly understood and agreed that the Agreement has been freely and voluntarily entered  
25 into by the parties hereto with the advice of counsel, who have explained the legal effect of this  
26 Agreement. The parties further acknowledge that no warranties or representations have been made  
27 on any subject other than as set forth in this Agreement. This Agreement may not be altered,  
28

modified or otherwise changed in any respect except by writing, duly executed by all of the parties or their authorized representatives.

18. Outstanding Liens for Medical Treatment. Plaintiff is solely responsible for satisfying any and all outstanding liens relating to Plaintiff's medical treatment arising out of the subject matter of this action. Plaintiff shall indemnify Defendant from any liability Defendant may incur from any lien claimant arising out of Plaintiff's failure to satisfy outstanding lien(s).

DATED: August 14, 2020

Respectfully submitted,

DAVID L. ANDERSON  
United States Attorney

/s/  
KENNETH W. BRAKEBILL\*  
Assistant United States Attorney  
Attorneys for Defendant

DATED: August 14, 2020

/s/  
BENJAMIN D. ROTHSTEIN  
EMILY A. HASSELBERG  
KEKER, VAN NEST & PETERS LLP  
Attorneys for Plaintiff

*\* In compliance with Civil Local Rule 5-1(i), the filer of this document attests that all signatories listed have concurred in the filing of this document.*

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: August 14, 2020

  
HONORABLE THOMAS S. HIXSON  
United States Magistrate Judge